



ADDENDUM

**Section 526 of the Tariff Act of 1930, 46 Stat. 741,
as amended by the Customs Procedural and
Simplification Act of 1978, 92 Stat. 888,
codified at 19 U.S.C. § 1526**

**SEC. 526. MERCHANTISE BEARING AMERICAN
TRADE-MARK.**

(a) **Importation Prohibited.**—Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trade-mark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent Office by a person domiciled in the United States, under the provisions of the Act entitled "An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same," approved February 20, 1905, as amended, and if a copy of the certificate of registration of such trade-mark is filed with the Secretary of the Treasury, in the manner provided in section 27 of such Act, unless written consent of the owner of such trade-mark is produced at the time of making entry.

(b) **SEIZURE AND FORFEITURE.**—Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) **INJUNCTION AND DAMAGES.**—Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade-mark and shall be liable for the same

damages and profits provided for wrongful use of a trade-mark, under the provisions of such Act of February 20, 1905, as amended.

(d) EXEMPTIONS.—(1) The trademark provisions of this section and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat.

427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trade-mark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized—

- (1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,
- (2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise,
- (3) more than 1 year after the date of forfeiture, by sale by appropriate customs officers at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or
- (4) if the merchandise is unsafe or a hazard to health, by destruction.

19 C.F.R. § 133.21

§ 133.21 Restrictions on importation of articles bearing recorded trademarks and trade names.

(a) *Copying or simulating marks or names.* Articles of foreign or domestic manufacture bearing a mark or name copying or simulating a recorded trademark or trade name shall be denied entry and are subject to forfeiture as prohibited importations. A "copying or simulating" mark or name is an actual counterfeit of the recorded mark or name or is one which so resembles it as to be likely to cause the public to associate the copying or simulating mark with the recorded mark or name.

(b) *Identical trademark.* Foreign-made articles bearing a trademark identical with one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States are subject to seizure and forfeiture as prohibited importations.

(c) *Restrictions not applicable.* The restrictions set forth in paragraphs (a) and (b) of this section do not apply to imported articles when:

(1) Both the foreign and the U.S. trademark or trade name are owned by the same person or business entity;

(2) The foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership or control (see §§ 133.2(d) and 133.12(d));

(3) The articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner;

(4) The objectionable mark is removed or obliterated prior to importation in such a manner as to be illegible and incapable of being reconstituted, for example by:

- (i) Grinding off imprinted trade-marks wherever they appear;
- (ii) Removing and disposing of plates bearing a trademark or trade name;
- (5) The merchandise is imported by the recordant of the trademark or trade name or his designate;
- (6) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraphs (a) and (b) of this section, and such consent is furnished to appropriate Customs officials; or
- (7) The articles of foreign manufacture bear a recorded trademark and the personal exemption is claimed and allowed under § 148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(4) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.24).

(Sec. 42, 60 Stat. 440, sec. 526, 46 Stat. 741; 15 U.S.C. 1124, 19 U.S.C. 1526)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

28 U.S.C. § 1331**§ 1331. Federal question**

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1338(a)**§ 1338. Patents, plant variety protection, copyrights, trade-marks, and unfair competition**

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

**Section 39 of the Lanham Trademark Act of 1946,
15 U.S.C. § 1121****§ 1121. Jurisdiction of Federal courts**

The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

28 U.S.C. § 1581**§ 1581. Civil actions against the United States and agencies and officers thereof**

- (a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.
- (b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.
- (c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.
- (d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—
 - (1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;
 - (2) any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act; and
 - (3) any final determination of the Secretary of Commerce under section 271 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act.
- (e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930; and

(2) any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930.

(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

- (1) revenue from imports or tonnage;
 - (2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
 - (3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
 - (4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.
- (j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

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